

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

UNITED STATES OF AMERICA,	:	Case No. 1:18-CV-595
	:	
Plaintiff,	:	
	:	
v.	:	JUDGE
	:	
SIX THOUSAND FIVE HUNDRED	:	<u>VERIFIED COMPLAINT FOR</u>
DOLLARS IN UNITED STATES	:	<u>FORFEITURE IN REM</u>
CURRENCY (\$6,500.00),	:	
	:	
Defendant.	:	
	:	

Plaintiff, United States of America, by its undersigned counsel, alleges the following for its action against the defendant in accordance with Supplemental Rule G(2) of the Federal Rules of Civil Procedure.

NATURE OF THE ACTION

1. This is a civil action *in rem* brought to enforce 21 U.S.C. § 881(a)(6), which provides for the forfeiture to the United States of:

All moneys, negotiable instruments, securities, or other things of value furnished or intended to be furnished by any person in exchange for a controlled substance or listed chemical in violation of this subchapter, all proceeds traceable to such an exchange, and all moneys, negotiable instruments, and securities used or intended to be used to facilitate any violation of this subchapter.

THE DEFENDANT IN REM

2. The defendant is Six Thousand Five Hundred Dollars in United States Currency (\$6,500.00) ("defendant currency"). On or about March 21, 2018, the Drug Enforcement Administration seized the defendant currency, from a vehicle operated by David Kemp and/or from his person, in the area of 1347 Hopple Street, Cincinnati, Ohio. The United States has

deposited the defendant currency into the Seized Asset Deposit Fund, where it will remain during the pendency of this action.

JURISDICTION AND VENUE

3. Plaintiff brings this action *in rem* in its own right to forfeit and condemn the defendant currency pursuant to 21 U.S.C. § 881(a)(6). This Court has jurisdiction over an action commenced by the United States under 28 U.S.C. § 1345 and over an action for forfeiture under 28 U.S.C. § 1355(a).

4. This Court has *in rem* jurisdiction over the defendant currency pursuant to 28 U.S.C. § 1355(b)(1)(A) because acts and omissions giving rise to the forfeiture occurred in the Southern District of Ohio.

5. Venue is proper in this district pursuant to 28 U.S.C. § 1355(b)(1)(A) because acts and omissions giving rise to the forfeiture occurred in the Southern District of Ohio and pursuant to 28 U.S.C. § 1395 because the defendant currency was found in the Southern District of Ohio.

BASIS FOR FORFEITURE

6. The defendant currency is subject to forfeiture pursuant to 21 U.S.C. § 881(a)(6) because the defendant currency represents property furnished or intended to be furnished by any person in exchange for a controlled substance, represents proceeds traceable to such an exchange, or was used or intended to be used to facilitate any violation of 21 U.S.C. § 841 or a conspiracy to commit such offense in violation of 21 U.S.C. § 846.

FACTS

7. The Drug Enforcement Administration (“DEA”) is investigating an organization which is believed to be involved in a conspiracy to distribute heroin, fentanyl, and cocaine in the Southern District of Ohio and elsewhere. Law enforcement officers have identified David Kemp

as an individual involved in the distribution of fentanyl.

8. David Kemp has a history with the DEA. On February 10, 2009, agents and law enforcement officers from the DEA Cincinnati Resident Office arrested David Kemp for his participation in a conspiracy to possess with intent to distribute approximately five kilograms of cocaine. On October 6, 2009, Kemp pled guilty to Conspiracy to Possess with Intent to Distribute in Excess of 500 Grams of Cocaine in the United States District Court for the Southern District of Ohio. (Case No. 1:09-CR-020-3.) The Court sentenced Kemp to seventy-eight month in prison, followed by five years of supervised release. Kemp also was convicted of Possession of Cocaine in June 2002.

9. On March 21, 2018, law enforcement officers with the Cincinnati Police Department ("CPD") conducted surveillance near the 1700 block of Knob Court in Cincinnati, Ohio, an area known for the high frequency of drug trafficking. While driving in an unmarked vehicle, officers observed David Kemp parked at the curb in a rented 2018 Hyundai Sonata. Kemp later pulled away from the curb and appeared to perform counter-surveillance. For example, as soon as one of the undercover surveillance units parked down the street, Kemp drove next to the undercover vehicle and peered into the vehicle in an apparent attempt to identify any law enforcement surveillance officers. Officers observed Kemp drive back to his original location where he briefly spoke to several individuals in vehicles that approached him.

10. Officers then observed a gray Infiniti pull up next to Kemp, who was parked along the street. After a brief meeting, the Infiniti drove down the block and backed into a parking spot. Kemp also drove away and backed his vehicle into a parking spot next to the Infiniti. Officers observed the unidentified driver of the Infiniti meet with Kemp outside the vehicles. After approximately three minutes, Kemp and the driver of the Infiniti returned to their respective

vehicles and departed the area. Based on the training and experience of the officers, Kemp's brief meetings with multiple individuals appeared to be indicative of the exchange of drugs and/or money.

11. Officers initiated a traffic stop, on Kemp for driving under suspension, in the area of 1347 Hopple Street, Cincinnati, Ohio. As officers approached the vehicle to speak with Kemp about his suspended driver's license, they smelled marijuana coming from the vehicle. As a result, officers conducted probable cause searches of the vehicle and its occupants.

12. After Kemp was removed from the vehicle, an officer conducted a pat down of Kemp and located approximately \$3,000.00 in United States currency in his front pants pocket. Kemp was placed into the uniform vehicle while the other occupants were removed from the rental vehicle. Officers identified Lashawn Lewis, Anthony Wilson, and Lorenzo McMullen as the passengers of the vehicle. All of these individuals have extensive criminal histories that include drug violations.

13. Officers then searched the inside compartment of the vehicle for the source of the marijuana odor and located numerous bundles of currency inside the center console of the vehicle. The currency totaled approximately \$10,000.00 and was wrapped in black rubber bands in a manner consistent with how drug traffickers wrap and sort their drug proceeds. Officers also found a pack of rubber bands and three mobile phones.

14. Initially, Kemp claimed that the currency belonged to him and was derived from rental income. When confronted with what officers had observed during surveillance on Knob Court, Kemp explained that he was just hanging out on the block smoking "weed" with friends.

15. Task Force Agent ("TFA") Kenneth Baker of the DEA spoke to Kemp about the currency that officers found in the vehicle and on his person. Kemp stated that he was going to

use the money to fix a property that he owns. When asked if the money came from a bank, Kemp stated, "Yes" and then changed his answer to "No." Kemp appeared nervous and would not clarify the origin of the money other than to state that he brought it from home.

16. TFA Baker explained to Kemp that he was a target of a federal investigation and that several individuals recently had been arrested in a federal conspiracy case. Kemp stated that he had nothing to do with those individuals. Kemp then changed his statement about the currency and explained that he recently was given part of the currency by his brother. Kemp stated that his brother's name is "Mike," but he did not provide TFA Baker with an intelligible last name. When asked exactly how he made the money, Kemp became very nervous.

17. TFA Baker informed Kemp that he knew Kemp had not declared any income for the past four years on his income taxes. Kemp admitted that he did not file any income taxes and had no proof of income. Once again, TFA Baker asked Kemp how he made the money. Kemp stated, "It came from my house." At that point, it appeared Kemp was trying to mislead TFA Baker to avoid answering the specific question of how he generated the money.

18. TFA Baker then questioned Kemp about the cell phones and package of rubber bands found inside the vehicle next to the money in the center console. Kemp denied any knowledge of the "flip" cell phone and rubber bands but claimed that the two smart phones belonged to him. According to Kemp, the flip phone and rubber bands may have come with the rental car.

19. Officers asked passengers Lashawn Lewis, Anthony Wilson, and Lorenzo McMullen about the flip phone, and no one claimed ownership of it. The passengers also denied any knowledge or ownership of the United States currency.

20. TFA Baker seized the currency and later learned that the currency totaled

\$13,869.00, which was in the following denominations.

DENOMINATION	QUANTITY
\$100	25
\$50	14
\$20	494
\$10	78
\$5	1
\$1	4

21. Narcotics trafficking is a cash business. As indicated above, the majority of the currency was in small denominations, which is consistent with street-level narcotics trafficking.

22. The 2018 Hyundai Sonata is a rental vehicle owned by EAN Holdings, LLC DBA Enterprise Rent-A-Car. Upon further investigation, TFA Baker learned that Kevin Benford had rented the vehicle, which was driven by David Kemp under suspension.

23. On March 26, 2018, the DEA obtained federal search warrants for the cell phones that were recovered during the traffic stop of Kemp. The search of the flip phone revealed several text conversations that are indicative of common jargon related to drug sales.

24. Kevin Benford submitted a claim to the DEA, asserting an interest in \$6,500.00 of the \$13,869.00 that was seized. In his administrative claim, Benford stated that the \$6,500.00 was his personal money used for business expenses.

25. Benford's criminal history consists, among other things, of convictions for trafficking in drugs, robbery, and carrying a concealed weapon.

26. By reason of the facts set forth herein, the defendant currency is properly condemned and forfeited to the United States pursuant to 21 U.S.C. § 881(a)(6).

CLAIM FOR RELIEF

WHEREFORE, the plaintiff respectfully requests that:

- (a) pursuant to Rule G(3)(b)(i), Supplemental Rules, the Clerk issue a warrant of arrest *in rem*, directing the United States to arrest and seize the defendant currency and to retain the same in its custody subject to further order of the Court;
- (b) the Court, pursuant to Rule G(4), Supplemental Rules, direct the United States to give notice to all persons and entities having an interest in the defendant currency to assert in conformity with the law a statement of any interest they may have, including notice by publication on the official government website, www.forfeiture.gov, for 30 consecutive days;
- (c) the forfeiture of the defendant currency to the United States be confirmed, enforced, and ordered by the Court;
- (d) the Court thereafter order the United States to dispose of the defendant currency as provided by law; and
- (e) the Court award the United States all other relief to which it is entitled, including the costs of this action.

Respectfully submitted,

BENJAMIN C. GLASSMAN
United States Attorney

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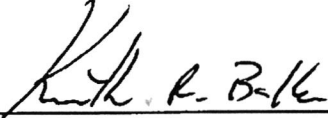
VERIFICATION

I, Kenneth R. Baker, hereby verify and declare under the penalty of perjury that I am a Task Force Agent with the Drug Enforcement Administration, that I have read the foregoing Verified Complaint for Forfeiture *in rem* and know the contents thereof, and that the matters contained in the complaint are true to my own knowledge, except that those matters stated to be alleged on information and belief and as to those matters, I believe them to be true.

The sources of my knowledge and information and the grounds of my belief are the official files and records of the United States, information supplied to me by other law enforcement officers, and my investigation of this case.

I hereby verify and declare under the penalty of perjury that the foregoing is true and correct.

Dated 8-22-2018

 TFO DEA
KENNETH R. BAKER, Task Force Agent
Drug Enforcement Administration

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

United States of America

(b) County of Residence of First Listed Plaintiff Hamilton
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
Deborah D. Grimes, Assistant United States Attorney
221 E. Fourth Street, Suite 400
Cincinnati, Ohio 45202 (513) 684-3711

DEFENDANTS

Six Thousand Five Hundred Dollars in United States Currency
(\$6,500.00)

County of Residence of First Listed Defendant Hamilton
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☒ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☐ 3 Federal Question (U.S. Government Not a Party)
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input checked="" type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from Another District (specify)
☐ 6 Multidistrict Litigation - Transfer
☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Forfeiture pursuant to 21 U.S.C. § 881(a)(6)

Brief description of cause:

Forfeiture

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

8/22/18
FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE